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NOTES

RAILWAY RATES AS PROTECTIVE TARIFFS —ANOTHER VIEW

The interesting article by Professor Hugo R. Meyer in the January number of the *Journal of Political Economy*, on "Railway Rates as Protective Tariffs," suggests the question as to what, after all, is the meaning of the term "protective" as applied to rate-making. In the literature of international trade the essence of the term is understood to be the conscious direction of industry by giving special aid to certain lines of business in order to enable them to meet foreign competition. A free-trade policy, on the other hand, is one which aims to leave producers to their own resources in the struggle with their competitors. If these terms are used in a similar way in the discussion of railroad policy, the philosophy underlying the decisions of the Interstate Commerce Commission is clearly not that of protection, but that of free trade. It is the spirit of these decisions that the railways should be looked upon as highways open to all on equal terms, and that it is not the business of the rate-makers to give preference to any one at the expense of another. The doctrine that no community shall be deprived by the railroads of its natural advantages does not indicate that the commission wished to give assistance to any person or place. It is simply the result of an attempt to enforce the legal requirement of an impartial treatment. When Professor Meyer says that the commission in its decisions has "judged the facts, not with an open mind, but with a mind influenced by certain peculiar political and economic theories, to-wit: that the freedom to trade over the entire area of the United States established by the framers of the Federal Constitution must be abridged" (p 12), he completely misinterprets the spirit of those decisions. This will appear from an examination of the cases quoted by Professor Meyer.

The case of the James & Mayer Buggy Co.¹ turned on an interpretation of the long- and short-haul clause. No economic or

¹ 3 I. C. Rep. 682, or 4 I. C. C. Rep. 744.

political theory was used to decide this case. It was entirely a question of law. What did Congress mean by the long-and short-haul clause? The commission in a previous case² had examined the history of this clause, and in an opinion written by Judge Cooley had laid down the method of construing the words "substantially similar circumstances and conditions." Everyone should read that masterly discussion before accepting Professor Meyer's strictures.

So also in the Raworth case.³ It was the long- and short-haul clause, not an economic theory of the commission, that led to the decision maintaining the natural advantages of eastern refiners.

The quotation made by Professor Meyer from the case of the Colorado Fuel and Iron Co.⁴ does not reveal any protectionist spirit. Quite the contrary. The statement is distinctly made that inability to compete by reason of inferiority as a producer is not to be the basis of adjusting relative rates. Impartial treatment by the carrier is insisted upon in this case.

Section 3 of the act to regulate commerce was the basis of the decision in the next case quoted.⁵ There was no desire on the part of the commission to restrict trade. It simply tried to decide whether the hauling of salt a distance of 427 miles at 35½ cents for one shipper, and 743 miles at the same charge for another (all under the control of the same road), was an undue preference to the latter. Professor Meyer says of this case: "By this decision and order the Interstate Commerce Commission in effect established a customs barrier of 8 cents per 100 lbs. against Michigan salt which sought a market in Texas" (p.4). On the contrary, the railroads had in effect given a bounty to Michigan salt that it might compete with Kansas salt in the Texas market, and the Interstate Commerce Commission by this order simply insisted on a policy of free trade.

The free-trade spirit is again shown in Chamber of Commerce of Minneapolis *vs.* Great Northern Railroad Co.,⁶ where the commission says:

² In the matter of the Petitions of the Louisville & Nashville Railroad Co., *et al.*—1 *I. C. R.* 279, or 1 *I. C. C. R.* 31.

³ 3 *I. C. R.* 857, or 5 *I. C. C. R.* 234.

⁴ 6 *I. C. C. R.* 488.

⁵ Anthony Salt Co. *vs.* Missouri Pacific Railway Co. 4 *I. C. R.* 40, or 5 *I. C. R.* 299.

⁶ 4 *I. C. R.* 239, or 5 *I. C. C. R.* 571.

It can hardly be doubted, in view of the testimony, that under the present adjustment of rates on wheat the milling interests of Minneapolis, and with them its general prosperity, and possibly its population, must decline. So far as such a result would be attributable solely to the greater natural advantages of Duluth as a point for the manufacture and shipment of flour, perhaps nothing could properly be done to avert it. Duluth is nearer to the markets than Minneapolis, and to this extent its advantages cannot and ought not to be denied or taken from it.

Professor Meyer's summary on p. 5 should be paraphrased to read as follows: "If the railroads may give a bounty to Michigan salt sold in Texas, to Cincinnati buggies sold in Augusta, or to Pacific coast sugar sold in the Missouri River valley, there is no reason why they may not dictate how the whole United States is to develop." Indeed, this paraphrase happens to coincide with the views expressed by Chairman Knapp in his testimony before the Senate committee as follows:

And that suggests another view to my mind which I think may properly be taken into account even by our railroad friends. As I said, I am very far from believing that there should be anything more than the most inconsiderable tendency, if any at all, toward the adjustment of rates on a mileage basis, and I think the prosperity of the railroads, and the development of the different sections of the country and their industries, justify the making of rates upon what might be called a commercial basis rather than any distance basis; but do you realize what an enormous power that is putting into the hands of the railroads? That is the power of tearing down and building up. That is the power which might very largely control the distribution of industries. And I want to say in that connection that I think on the whole it is remarkable that that power has been so slightly abused. But it is there. My esteemed friend, Mr. Elliott, has just told you that the rates on wool from Montana must be adjusted with reference to the rates on wool from Kentucky. Well, grant it. But suppose he should see fit to adjust his rates on wool so that they moved to the Pacific coast, and it became for the interest of his railroad to change that adjustment. Is that to be left entirely to his judgment?⁷

Continuing with the cases cited: In the milk case⁸ the problem that presented itself to the commission was this: A group rate made for a distance of 335 miles means a much greater service to one shipper than to another for the same charge. Clearly this was

⁷ *Hearings before the Committee on Interstate Commerce, United States Senate, 1905, Vol IV, p. 3298.*

⁸ *7 I. C. C. R. 92.*

disparity in treatment in favor of the distant shipper. Was it unreasonable? It seemed to the commission that, according to the testimony in this case, a real injury was done by a departure from the rule of no preference. In other cases it had sanctioned group rates because no injury was done. Professor Meyer mentions as "instructive" the fact that one reason why the New York dealers in milk did not buy more milk of near-by farmers was because some of the latter persisted in feeding brewery swill to their cows. It is only fair to say that this was only one of the many facts weighed by the commission. They found, for example, that an efficient system of milk inspection had been established, and that the milk produced in the near-by section "had, for several years at least, been of good quality and fully up to the prescribed standard of purity." Further, it may be asked why a railroad tariff should take the place of pure-food legislation by giving special favors to distant producers.

Concerning the market-garden case⁹ Professor Meyer says: "In 1897 a market gardener at Verona appealed successfully to the commission for protection against the market gardeners more distant from St. Louis." But in the opinion of the commission the idea is that he appealed successfully against discrimination, since the facts showed that in a total haul of 640 miles, a rate for the first 271 miles was the same, and then in the next 200 miles fell from 70 to 30 cents upon second class, and from 44 to 22 cents on third class.

After citing the case of Export Rates from Points East and West of the Mississippi,¹⁰ Professor Meyer says:

In the decisions just reviewed the Interstate Commerce Commission undertook to protect certain producers from those destructions and impairments of values, as well as those changes in the course of trade, which are a necessary incident to the progress and the development of our country. That policy was as indefensible and as destructive to progress as would be the policy of legislating against the adoption of labor-saving machinery lest the use of such machinery should cause the displacement of labor or compel the labor thus displaced to find new employment. (P. 7.)

Whether this be fair comment let the reader judge from the following quotation from that decision:

The undisputed evidence shows that the effect of the 13½ cent rate has been the exclusion of Illinois corn from the export market. This was

⁹ 7 I. C. C. R. 43.

¹⁰ 8 I. C. C. R. 185.

abundantly proved by witnesses to the fact itself, and can only be accounted for by the adjustment of existing rates. The domestic rate on Iowa corn from the Mississippi River to the seaboard is 20½ cents, against 13½ cents for export. This makes Iowa corn worth 7 cents per 100 pounds, or nearly 4 cents per bushel more for export than for domestic consumption. On the other hand, Illinois corn bears a rate from Chicago of 1½ cents per hundred more for domestic use than for export, or less than 1 per cent. per bushel. Under this adjustment of tariffs it is manifest that if Iowa corn can be sold at all in competition with Illinois corn, it must be sold exclusively for export. But it results in practically excluding Illinois corn from the export trade. Whatever advantage Illinois would have over Iowa in the export trade by reason of its geographical location is overcome by a rate that takes Iowa corn at a less price across the state of Illinois to the seaboard than is applied to corn produced in Illinois. . . . The trade in Illinois corn is stagnant, while in Iowa corn the movement is so active that there seems to be a want of sufficient cars to handle it. This difference in trade conditions can only be accounted for by the influence of a marked difference in rates which holds Illinois corn back and allows Iowa corn to go forward.

Was this freedom of trade? What similarity here to labor-saving machines? What added labor did this decision cause? Why was such a misadjustment of rates a necessary incident of progress?

Again in the matter of relative rates on grain and flour for export¹¹ the general attitude of the commission was not that of "extending the policy of protection to our native industry" (p. 8). The commission did indeed consider the effect of certain rates on the milling industry, but it was not because they were undertaking to foster that industry. They first determined what was *prima facie* impartial treatment, and then considered whether the departure by the railroads from that was so great as to injure anyone.

It is difficult to see why the early import rate case¹² should have been chosen to show that according to the commission "the policy of protection to our native industries is so sacred that we may under no circumstances close our eyes to any modification of it." It is a clear case of a strictly legal interpretation. No warrant could be found in the law for considering the differences in the circumstances affecting import as compared with domestic traffic. *The nature of those differences was not the basis of the decision.* The fact that the Supreme Court of the United States¹³ later reversed this legal

¹¹ 8 I. C. C. R. 214.

¹² 3 I. C. R. 417, or 4 I. C. C. R. 447.

¹³ Texas and Pacific Railroad Co., 162 U. S. 210.

interpretation does not make the citation of this case less inapposite. It may be noted that three judges sustained the commission.

When we come to the matter of differential rates to and from North Atlantic ports,¹⁴ we do find an attempt to equalize commercial conditions. Yet Professor Meyer does not make reference to this case. This decision, it should be noted, was not an interpretation of the Interstate Commerce Law. No complaint had been made; the commission had been appealed to as an arbitrator. But the basis of the award was: "What will equalize the advantages of transportation through these various ports?" The significance of this departure from its former attitude is brought out by Commissioner Clements in his dissenting opinion:

If they [the carriers] acquiesce, we will have gone beyond our authority to interfere in the course of trade, determining the direction and destination of commerce, a matter with which we are not charged. Tomorrow we may be called upon to determine what share the Gulf ports may have and the Gulf roads may carry; the next day, to fix the proportion to which the Pacific coast is entitled.

The attitude of the commission in this case is interesting because it had said so late as March 12, 1904,¹⁵ that "it can be no duty of the commission to equalize natural advantages between localities through the adjustment of tariff rates." But it serves to emphasize what in fact has been the past policy of the commission. It has been a policy dictated by the law itself, especially by the long- and short-haul provision. To criticise that policy is to impeach the wisdom of Congress, not the efficiency of the commission.

Professor Meyer makes the fundamental error of identifying the question of government *versus* private rate-making with the question of protection *versus* free-trade. A government official may be either a protectionist or a free-trader in this matter, and so may a traffic official. He who is inclined to favor the free-trade principle will also be inclined to favor a classification and a distance tariff based as largely as possible on expense, with the idea that trade should adjust itself to that, and that any trade which cannot adjust itself to such a tariff is probably not worth while. On the other hand, the protectionist is logically an equalizer of commercial conditions, aiming to make special rates so that this man can compete there and that man can compete here.

¹⁴ 11 I. C. C. R. 13.

¹⁵ 10 I. C. C. R. 148.

Without attempting a general discussion of the problem now, it may be said that a distance tariff is not the horrible thing depicted by Professor Meyer and the railroad apologists. Doubtless the ideal condition would be the freedom of movement that would come from gratuitous transportation. But we happen to live in a world in which labor is required to drag things over the ground, and hence we cannot ignore the expense due to distance in the adjustment of tariff rates. In the world as it is, some restriction of traffic is a good thing. Why should salt consumed in Texas be hauled over a thousand miles from Michigan, when it can be had for half the labor from Kansas?¹⁶ That a distance tariff would bring us back to a condition similar to that existing before the adoption of the Constitution is a ridiculous proposition. A distance tariff does not mean an equal mileage rate; many methods of tapering are possible. The great merit of a distance tariff is that it does away with arbitrariness and favoritism, and is at the same time compatible with a maximum production of wealth. That it would cause economic readjustment is an argument for being careful in the matter of reform, but is not an argument against a distance tariff as an ideal to serve as a compass on the sea of rate controversy.

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A YEAR IN FINANCE

M. Raffalovich's monumental financial annual¹ comes forth as comprehensive, as painstaking, and as indispensable as ever. The present volume covers the economic and financial year 1904 and the beginning of 1905. It is more than a financial compendium: it is a carefully reasoned treatise on the economic elements of prosperity, combining special and very extended articles by financial students in the principal countries. The introduction is apparently the work of M. Raffalovich himself, and contains his impressions about the financial year.

Undoubtedly the great event of the year was the Russo-Japanese War. It occurred at a time when both Europe and the United States were recuperating from depression, and the effects of the war upon

¹⁶ On this point see the testimony of Professor W. Z. Ripley, *Senate Hearings*, 1905, Vol. III, p. 2323.

¹ *Le Marché Financier*. By Arthur Raffalovich. Paris, 1905.